

**Letter of Findings Number: 03-20130317P  
Withholding Tax-Penalty and Interest  
For the Period March 2013**

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**ISSUE**

**I. Tax Administration–Penalty and Interest.**

**Authority:** IC § 6-8.1-10-1; IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the ten percent negligence penalty and the assessment of interest.

**STATEMENT OF FACTS**

Taxpayer had a withholding tax payment for the period of March 2013 that Taxpayer did not make timely. The Indiana Department of Revenue ("Department") issued a proposed assessment, which also included penalty and interest. Taxpayer protests the penalty and interest that the Department imposed. An administrative hearing was held, and this Letter of Findings results. More facts will be provided below as needed.

**I. Tax Administration–Penalty and Interest.**

**DISCUSSION**

Taxpayer protests the imposition of the ten percent negligence penalty on Taxpayer's failure to timely remit withholding tax. Taxpayer also protests the assessment of interest. Regarding interest, under IC § 6-8.1-10-1(e) interest cannot be waived.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides in relevant part:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer, in correspondence to the Department, states:

[Taxpayer] is very prompt in making withholding payments and we have not missed a single payment since 2008. The withholding payment was only delayed by 12 days and as soon as it was brought to our attention, the payment was immediately made without any further delay.

During the hearing, Taxpayer stated that the late payment was due to the fact that the employee responsible for remitting the payment was travelling on a business trip. Taxpayer also states that it has "no late payments since 2008." Taxpayer argues that since the responsible employee travels frequently to places "where Internet [ sic] access might be limited," that the travel caused the inadvertent late payment. After a review of the facts and Taxpayer's withholding remittance history, the Department finds that Taxpayer has established reasonable cause in this instance.

**FINDING**

Taxpayer's protest regarding the penalty is sustained; Taxpayer's protest regarding interest is denied.

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